

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P. No. 4585-CAT of 2002

Date of Decision: 27.09.2006

Head Constable Satish Kumar No.697/CPW.

..Petitioner

Versus

Union of India and others.

..Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. H.S. Mann, Advocate,
for the petitioner.

Mrs. Lisa Gill, Advocate,
for the respondents.

S.D. ANAND, J.

1. Whether an order of remand by the Appellate Authority is envisioned in terms of Rule 16.28 of the Punjab Police Rules, 1934 or not is the solitary poser canvassed before us in this Civil Writ Petition directed against the order dated 23.1.2002 of respondent No.5 – Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Apart from upholding the validity of the impugned penalty on merits, the Tribunal held that the Appellate Authority did indeed have the power to remand. In the matter before us, however, the challenge has been confined only with regard to the poser aforementioned.

2. A brief recapitulation of the facts, which are even otherwise beyond the pale of controversy at the moment, would be helpful. The petitioner (a Head Constable in the employment of respondent Nos. 1 to 4) was departmentally proceeded against on a charge of having belaboured certain Home Guard Jawans on two or three occasions whilst being under

the influence of liquor. He was also charged with disobedience of the order of his superior (ASI Balbir Singh Incharge Repeater Station, Kasauli). The petitioner faced that charge along with Constable Gurdeep Singh, who is a non petitioner before this Court. In addition to the two items of joint charge aforementioned, the petitioner was also accused of having thrown away a log book after having torn it.

3. The Enquiry Officer (a police official of the rank of Inspector) indicted the petitioner. The Disciplinary Authority (respondent No.4), agreeing with the finding aforementioned, issued a show cause notice dated 10.10.1995 (Annexure P/3) to the petitioner proposing the imposition of punishment of forfeiture of one year service with permanent effect. The petitioner raised a challenge to the adequacy of the evidence adduced by the department at the enquiry and also attributed mala fides to the Enquiry Officer. The Disciplinary Authority imposed a penalty of forfeiture of one year service with permanent effect, vide order dated 5.10.1994 (Annexure P/1).

4. In appeal, the Appellate Authority (Respondent No.3) negatived the entire challenge put forward by the petitioner to the validity of the findings at the enquiry and also the plea of mala fides against the Enquiry Officer. However, the Appellate Authority found that the punishment awarded was not in accord with those prescribed under Rule 16(1) of the Punjab Police Rules. It directed the Disciplinary Authority to proceed from the findings stage in accordance with the provisions of the PPR (Order dated 29.3.1995-Annexure P/2).

5. Thereafter, respondent No.4 served a notice dated 10.10.1995 (Annexure P/3) upon the petitioner, requiring the latter to show cause why

the punishment of stoppage of two annual increments, with permanent effect, may not be imposed upon him.

6. In response dated 26.10.1995 (Annexure P/4), the petitioner reiterated the pleas earlier advanced by him to challenge the appreciation of evidence by the Enquiry Officer and also the allegations of mala fides against him (Enquiry Officer). The authority of respondent No.4 to remand the case was also challenged.

7. On consideration of the record, the respondent No.4 imposed a penalty of stoppage of two annual increments with permanent effect upon the petitioner (vide order dated 25.1.1996 – Annexure P/5).

8. The petitioner preferred an appeal dated 3.2.1996 (Annexure P/6) which was declined by respondent No.4 vide order dated 3.4.1996 (Annexure P/7). A revision preferred by the petitioner against the order dated 3.4.1996 (Annexure P/7) was declined by respondent No.2 vide order dated 25.3.1998 (Annexure P/8).

9. After having failed in all the departmental forums, the petitioner preferred O.A. No. 530/CH/98, which was rejected by respondent No.5 vide order dated 23.1.2002 (Annexure P/9).

10. We have heard Mr. H.S. Mann, learned counsel for the petitioner and Mrs. Lisa Gill, learned counsel for the respondents.

11. As already indicated in an earlier part of this judgment, the learned counsel for the petitioner pressed the challenge in the petition only qua the validity of the impugned remand order which stands reproduced in the form of a poser in para no.1 of this judgment.

12. As the controversy essentially involves the interpretation of Rule 16.28 of the Punjab Police Rules, 1934, it is extracted as under for

facility of reference:-

“16.28. Powers to review proceedings. (1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. [The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.]

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.”

13. The learned counsel for the petitioner argued that the remand of the matter is not within the ambit of the provisions of Rule 16.28 which authorize the indicated Appellate Authority to (only) confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. The plea raised thereby is that the order of remand being unauthorised in terms of the rule aforesaid, a great prejudice has been caused to the petitioner who would have had an additional opportunity to show cause if the Appellate Authority had, by itself, proposed to enhance the punishment in terms of Rule 16.28 (3). In support of the plea that the Appellate Authority is not competent to order a remand in terms of the rule aforesaid, the learned counsel placed reliance upon a Single Bench ruling of this Court reported as 1988(7) SLR, 492 (The Punjab State versus Piara Singh, Ex-Head Constable.

14. The learned counsel for the respondents argued that the present is not a case where any type of prejudice has been caused to the petitioner inasmuch as he had been afforded a personal hearing by the Disciplinary Authority, the Appellate Authority and also by the Revisional Authority. It was also pointed out that the petitioner had been indicted for fairly serious items of charge which do not fit in with the scheme of things governing a disciplined force like the police.

15. We have considered the rival contentions. We are of the view that the plea advocated on behalf of the petitioner does not merit acceptance. It may further be noticed that though the judicial pronouncement relied upon by the petitioner may, on the first blush, appear to be supportive of the plea raised on the basis thereof, it is in substance not applicable to the facts and circumstances of the present case. The facts in the Punjab State's case (supra) were entirely different. In that case, the Appellate Authority remanded the case to enable the Disciplinary Authority to award enhanced punishment. It was not a case where the punishment imposed was authorized in terms of the enumerative rule 16.1. It is one thing to require the Disciplinary Authority to impose an enhanced punishment; while it is quite another thing to afford an opportunity to the Disciplinary Authority to proceed in the matter and consider the award of an authorized punishment. The endeavoured drawal of a parallel, thus, between the facts of that case and the present case is illogical.

16. The punishments which the Disciplinary Authority could impose in a case of the indicated category are enumerated in rule 16.1. As would be apparent from a perusal of that rule, forfeiture of service is not enumerated as an authorized punishment. In view, thus, of the fact

aforementioned, there was nothing illegal or irregular on the part of the Appellate Authority to have forwarded the proceedings to the Disciplinary Authority for passing an order afresh on point of punishment. The essential indication was that the Disciplinary Authority ought to pass an order to inflict an authorized punishment. For the view we have taken, we draw sustenance from a judicial pronouncement rendered by the Apex Court in M.M. Malhotra Versus Union of India, (2005) 8 SCC 351 (decided on 4.10.2005) wherein it was observed that if foundation for an order of punishment is found to be not in accordance with law, case may be remanded to the authorities concerned to reconsider the question of quantum of punishment. Though the matter aforementioned pertained to general law, the principle enunciated thereby is relevant in the context.

17. That apart, it is apparent from the record that the Appellate Authority and Revisional Authority granted an opportunity of hearing to the petitioner (on 29.3.1996 and 27.10.1997 respectively) who cannot, thus, be heard to argue any prejudice in the context in any manner.

18. In view, thus, of the fact that the challenge posed by the petitioner is not found to be sustainable, the writ petition shall stand dismissed. There will be no order as to costs in the peculiar facts and circumstances of the case.

(S.D. ANAND)
JUDGE

September 27, 2006
vkd

(J.S. KHEHAR)
JUDGE